

HOUSE BILL No. 1176

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-20-1-27; IC 23-2-5-20; IC 24-4.4-2; IC 24-4.5; IC 24-9; IC 32-29-7-3.

Synopsis: Residential mortgage lending practices. Prohibits a creditor or loan broker from recommending or issuing to, or procuring on behalf of, a borrower a residential mortgage loan without first making a good faith inquiry into the borrower's ability to repay the loan at the loan's full monthly cost. Provides that in the case of a residential mortgage loan that is closed after June 30, 2009, the creditor may not contract for and may not charge the debtor a prepayment fee or penalty. Provides that a settlement service provider in a home loan transaction shall, upon the borrower's request, permit the borrower to inspect the closing documents with respect to the home loan not later than two business days before the closing of the loan, subject to the settlement service provider's ability to obtain the needed information from the creditor or other parties to the transaction, upon a good faith effort by the settlement service provider to obtain the needed information. Provides that the borrower may waive the right to inspect the closing documents by providing a written notice of waiver to the settlement service provider at or before the time of closing. Provides that if the borrower requests to inspect the closing documents and the settlement service provider: (1) does not permit the borrower to inspect the documents in the specified manner or within the specified time frame; (2) is unable to obtain the needed information to allow the borrower to inspect the documents; or (3) has obtained incomplete information from the creditor or other parties; the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or into the purchase contract. Provides that if the terms of the home loan set forth in the documents made available to the

(Continued next page)

Effective: Upon passage; July 1, 2009.

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January 12, 2009, read first time and referred to Committee on Financial Institutions.



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borrower before the closing differ from the terms of the home loan presented to the borrower at the time of the closing: (1) the attorney general's homeowner protection unit may investigate the circumstances surrounding the home loan and take certain enforcement actions; and (2) the borrower is entitled to: (A) delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or into the purchase contract; and (B) bring an action for certain relief against the creditor if the creditor does not conform the terms of the home loan to the terms set forth in the documents made available to the borrower before the closing. Provides that a settlement service provider is subject to a civil penalty of \$25 for each time the settlement service provider fails to make closing documents available to a borrower in the manner and within the time prescribed, unless: (1) the creditor or other parties having the needed information fail to provide that information or provide incomplete information; or (2) the borrower waives the borrower's right to receive the closing documents. Provides that after December 31, 2009, a creditor may not issue a mortgage loan to a borrower in Indiana unless the creditor has: (1) established an appraisal review program (program) that has been approved by the real estate appraiser licensure and certification board (board); or (2) adopted a program established by the board. Sets forth criteria that a program established by a creditor or the board must meet. Requires the board to adopt, not later than August 1, 2009, criteria for: (1) reviewing programs established by creditors; and (2) a program that may be adopted by creditors that do not establish their own programs. Requires the real estate commission to adopt, not later than September 1, 2009, emergency rules to adopt and implement the board's criteria. Provides that any civil penalties collected shall be deposited in the home ownership education account within the state general fund. Extends the period in a residential mortgage foreclosure proceeding during which process may not issue for the execution of a judgment or decree of sale from three months to 120 days after the filing of the complaint.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1176

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 27. (a) The home ownership education account
4 within the state general fund is established to support the home
5 ownership education programs established under section 4(d) of this
6 chapter. The account is administered by the authority.
7 (b) The home ownership education account consists of ~~(1) fees~~
8 ~~collected under IC 24-9-9; and (2)~~ civil penalties imposed and
9 collected under:
10 ~~(A) (1) IC 6-1.1-12-43(g)(2)(B); or~~
11 ~~(B) (2) IC 27-7-3-15.5(e); or~~
12 **(3) IC 24-9-4.5-9(b).**
13 (c) The expenses of administering the home ownership education
14 account shall be paid from money in the account.
15 (d) The treasurer of state shall invest the money in the home



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ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 2. IC 23-2-5-20, AS AMENDED BY P.L.145-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. (a) As used in this section, "ability to repay", with respect to a loan, including the consolidation or refinancing of an existing loan, means the factors likely to affect a borrower's ability to repay the loan at the loan's full monthly cost, including the following:

(1) The borrower's present and future:

(A) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;

(B) expenses;

(C) assets; and

(D) liabilities.

(2) The borrower's credit history.

(3) Any other factor likely to affect the borrower's ability to repay the loan at the loan's full monthly cost.

(b) As used in this section, "borrower" includes a prospective borrower, where appropriate.

(c) As used in this section, "full monthly cost", with respect to a loan, means the maximum monthly payment that the borrower will be required to pay with respect to the loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying at any time during the term of the loan:

(1) Principal plus interest at the loan's fully indexed rate.

(2) Property taxes.

(3) Homeowners insurance premiums.

(4) Private mortgage insurance premiums.

(5) Premiums for:

(A) credit life insurance;

(B) credit disability insurance;

(C) credit unemployment insurance; or

(D) other consumer credit insurance;

that the borrower has agreed to pay.

(6) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(7) Any other monthly costs that the borrower will be responsible for paying at any time during the term of the loan.

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(d) As used in this section, "fully indexed rate", with respect to a loan, means:

- (1) for a fixed rate loan in which the interest rate will not vary during the term of the loan, the rate as of the date of closing;
- (2) for a loan in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the loan agreement; or
- (3) for all other loans in which the rate may vary at any time during the term of the loan, the maximum rate that may be charged during the term of the loan.

(e) For purposes of this section, a person makes a "good faith inquiry" into a borrower's ability to repay a loan if the person obtains:

- (1) a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the borrower; and
- (2) other relevant information about the borrower's present and future income, expenses, assets, and liabilities through:
 - (A) a current or past employer of the borrower;
 - (B) public records; or
 - (C) any other legal and commercially reasonable means.

(f) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder any document that the person knows:
 - (A) contains:
 - (i) a misstatement; or
 - (ii) an untrue statement;
 - of a material fact; or

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(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:

(A) The personal information is:

(i) included on an application form or another form; or

(ii) transmitted as part of an application process or an enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a loan to, or procure a loan on behalf of, a borrower without first making a good faith inquiry into the borrower's ability to repay the loan. A person that conducts a good faith inquiry into a borrower's ability to repay a loan is not liable to:

(A) the borrower;

(B) a subsequent purchaser of the property that is the subject of the loan; or

(C) any other person;

if the borrower later defaults on the loan that the person has recommended to, or procured on behalf of, the borrower.

~~(b)~~ (g) A person who commits an act described in subsection ~~(a)~~ (f) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 3. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that is closed after June 30, 2009. A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

~~(2)~~ (3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is

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1 sold for an amount that is less than the amount of the debtor's
 2 outstanding obligation under the first lien mortgage transaction. A
 3 creditor or mortgage servicer that fails to respond to an offer within the
 4 time prescribed by this subsection is liable in accordance with 12
 5 U.S.C. 2605(f) in any action brought under that section.

6 SECTION 4. IC 24-4.4-2-201.5 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2009]: **Sec. 201.5. (1) As used in this section,**
 9 **"ability to repay", with respect to a first lien mortgage transaction,**
 10 **including the consolidation or refinancing of an existing first lien**
 11 **mortgage transaction, means the factors likely to affect a debtor's**
 12 **ability to repay the first lien mortgage transaction at the first lien**
 13 **mortgage transaction's full monthly cost, including the following:**

14 (a) The debtor's present and future:

- 15 (i) income, not including nonrecurring overtime payments,
- 16 nonrecurring seasonal compensation, or other irregular
- 17 income;
- 18 (ii) expenses;
- 19 (iii) assets; and
- 20 (iv) liabilities.

21 (b) The debtor's credit history.

22 (c) Any other factor likely to affect the debtor's ability to
 23 repay the first lien mortgage transaction at the first lien
 24 mortgage transaction's full monthly cost.

25 (2) As used in this section, "debtor" includes a prospective
 26 debtor, where appropriate.

27 (3) As used in this section, "full monthly cost", with respect to
 28 a first lien mortgage transaction, means the maximum monthly
 29 payment that the debtor will be required to pay with respect to the
 30 first lien mortgage transaction, calculated as the total of the
 31 following monthly costs that the debtor will be responsible for
 32 paying at any time during the term of the first lien mortgage
 33 transaction:

- 34 (a) Principal plus interest at the first lien mortgage
- 35 transaction's fully indexed rate.
- 36 (b) Property taxes.
- 37 (c) Homeowners insurance premiums.
- 38 (d) Private mortgage insurance premiums.
- 39 (e) Premiums for:
- 40 (i) credit life insurance;
- 41 (ii) credit disability insurance;
- 42 (iii) credit unemployment insurance; or

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(iv) other consumer credit insurance;

that the debtor has agreed to pay.

(f) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(g) Any other monthly costs that the debtor will be responsible for paying at any time during the term of the first lien mortgage transaction.

(4) As used in this section, "fully indexed rate", with respect to a first lien mortgage transaction, means:

(a) for a fixed rate first lien mortgage transaction in which the interest rate will not vary during the term of the first lien mortgage transaction, the rate as of the date of closing;

(b) for a first lien mortgage transaction in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the loan agreement; or

(c) for all other first lien mortgage transactions in which the rate may vary at any time during the term of the first lien mortgage transaction, the maximum rate that may be charged during the term of the first lien mortgage transaction.

(5) For purposes of this section, a creditor makes a "good faith inquiry" into a debtor's ability to repay a first lien mortgage transaction if the creditor obtains:

(a) a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the debtor; and

(b) other relevant information about the debtor's present and future income, expenses, assets, and liabilities through:

(i) a current or past employer of the debtor;

(ii) public records; or

(iii) any other legal and commercially reasonable means.

(6) A creditor may not recommend or issue a first lien mortgage transaction to a debtor without first making a good faith inquiry into the debtor's ability to repay the first lien mortgage transaction. A creditor that conducts a good faith inquiry into a debtor's ability to repay a first lien mortgage transaction is not liable to:

(a) the debtor;

(b) a subsequent purchaser of the property that is the subject of the first lien mortgage transaction; or

(c) any other person;

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1 if the debtor later defaults on the first lien mortgage transaction
2 that the creditor has recommended or issued to the debtor.

3 SECTION 5. IC 24-4.5-2-209, AS AMENDED BY P.L.145-2008,
4 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2009]: Sec. 209. ~~Right to Prepay =~~ (1) As used in this section,
6 "mortgage transaction" means a consumer credit sale in which a
7 mortgage, deed of trust, or land contract that constitutes a lien is
8 created or retained against land upon which there is a dwelling
9 that is or will be used by the debtor primarily for personal, family,
10 or household purposes.

11 ~~(1)~~ (2) Subject to the provisions on rebate upon prepayment
12 (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of
13 a consumer credit sale, refinancing, or consolidation at any time
14 without penalty. **In the case of a mortgage transaction, or the**
15 **refinancing or consolidation of a mortgage transaction, that is**
16 **closed after June 30, 2009, the creditor may not contract for and**
17 **may not charge the debtor a prepayment fee or penalty.**

18 ~~(2)~~ (3) At the time of prepayment of a credit sale not subject to the
19 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total
20 credit service charge, including the prepaid credit service charge, may
21 not exceed the maximum charge allowed under this chapter for the
22 period the credit sale was in effect.

23 ~~(3)~~ (4) The creditor or mortgage servicer shall provide an accurate
24 payoff of the consumer credit sale to the debtor within ten (10)
25 calendar days after the creditor or mortgage servicer receives the
26 debtor's written request for the accurate consumer credit sale payoff
27 amount. A creditor or mortgage servicer who fails to provide the
28 accurate consumer credit sale payoff amount is liable for:

29 (A) one hundred dollars (\$100) if an accurate consumer credit
30 sale payoff amount is not provided by the creditor or mortgage
31 servicer within ten (10) calendar days after the creditor or
32 mortgage servicer receives the debtor's first written request;
33 and

34 (B) the greater of:

35 (i) one hundred dollars (\$100); or

36 (ii) the credit service charge that accrues on the sale from
37 the date the creditor or mortgage servicer receives the first
38 written request until the date on which the accurate
39 consumer credit sale payoff amount is provided;

40 if an accurate consumer credit sale payoff amount is not
41 provided by the creditor or mortgage servicer within ten (10)
42 calendar days after the creditor or mortgage servicer receives

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the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

~~(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.~~ (5) This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 6. IC 24-4.5-3-209, AS AMENDED BY P.L.145-2008, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 209. ~~Right to Prepay~~ - (1) As used in this section, "mortgage transaction" means a consumer credit loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

~~(1)~~ (2) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is closed before July 1, 2009, and that is primarily secured by an interest in land, a lender may

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contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

- (a) if the loan is refinanced or consolidated with the same creditor;
- (b) for prepayment by proceeds of any insurance or acceleration after default; or
- (c) after three (3) years from the contract date.

In the case of a mortgage transaction, or the refinancing or consolidation of a mortgage transaction, that is closed after June 30, 2009, the creditor may not contract for and may not charge the debtor a prepayment fee or penalty.

~~(2)~~ (3) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

- (a) The loan origination fee allowed under IC 24-4.5-3-201.
- (b) The debtor paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

~~(3)~~ (4) The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

- (a) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and
- (b) the greater of:
 - (i) one hundred dollars (\$100); or
 - (ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

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1 if an accurate consumer loan payoff amount is not provided by the
 2 creditor or mortgage servicer within ten (10) calendar days after
 3 the creditor or mortgage servicer receives the debtor's second
 4 written request, and the creditor or mortgage servicer failed to
 5 comply with subdivision (a).

6 A liability under this subsection is an excess charge under
 7 IC 24-4.5-5-202.

8 ~~(4) As used in this subsection, "mortgage transaction" means a~~
 9 ~~consumer credit loan in which a mortgage, deed of trust, or a land~~
 10 ~~contract that constitutes a lien is created or retained against land upon~~
 11 ~~which there is a dwelling that is or will be used by the debtor primarily~~
 12 ~~for personal, family, or household purposes.~~ (5) This subsection applies
 13 to a mortgage transaction with respect to which any installment or
 14 minimum payment due is delinquent for at least sixty (60) days. The
 15 creditor, servicer, or the creditor's agent shall acknowledge a written
 16 offer made in connection with a proposed short sale not later than ten
 17 (10) business days after the date of the offer if the offer complies with
 18 the requirements for a qualified written request set forth in 12 U.S.C.
 19 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to
 20 acknowledge a written offer made in connection with a proposed short
 21 sale from a third party acting on behalf of the debtor only if the debtor
 22 has provided written authorization for the creditor, servicer, or
 23 creditor's agent to do so. Not later than thirty (30) business days after
 24 receipt of an offer under this subsection, the creditor, servicer, or
 25 creditor's agent shall respond to the offer with an acceptance or a
 26 rejection of the offer. As used in this subsection, "short sale" means a
 27 transaction in which the property that is the subject of a mortgage
 28 transaction is sold for an amount that is less than the amount of the
 29 debtor's outstanding obligation under the mortgage transaction. A
 30 creditor or mortgage servicer that fails to respond to an offer within the
 31 time prescribed by this subsection is liable in accordance with 12
 32 U.S.C. 2605(f) in any action brought under that section.

33 SECTION 7. IC 24-9-1-1, AS AMENDED BY P.L.181-2006,
 34 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2009]: Sec. 1. Except for IC 24-9-3-7(3) **and IC 24-9-4.6**, this
 36 article does not apply to:

- 37 (1) a loan made or acquired by a person organized or chartered
 38 under the laws of this state, any other state, or the United States
 39 relating to banks, trust companies, savings associations, savings
 40 banks, credit unions, or industrial loan and investment companies;
 41 or
 42 (2) a loan:

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(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;

(E) to be funded by the Indiana housing and community development authority; or

(F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

SECTION 8. IC 24-9-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) Except as provided in subsection (b), "points and fees" means the total of the following:

(1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January 1, 2004).

(2) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in the broker's own name.

As used in subdivision (2), "compensation" does not include a payment included in subdivision (1).

(b) The term does not include the following:

(1) Bona fide discount points.

(2) An amount not to exceed one and one-half (1 1/2) points in indirect broker compensation, if the terms of the loan do not include:

(A) a prepayment penalty, in the case of a home loan that is closed after June 30, 2009; or

(B) a prepayment penalty that exceeds two percent (2%) of the home loan ~~principle~~, principal, in the case of a home loan that is closed before July 1, 2009.

(3) Reasonable fees paid to an affiliate of the creditor.

(4) Interest prepaid by the borrower for the month in which the home loan is closed.

SECTION 9. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.1. (a) As used in this section, "ability to repay", with respect to a home loan, including the consolidation or**

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1 refinancing of an existing home loan, means the factors likely to
 2 affect a borrower's ability to repay the home loan at the home
 3 loan's full monthly cost, including the following:

4 (1) The borrower's present and future:

5 (A) income, not including nonrecurring overtime
 6 payments, nonrecurring seasonal compensation, or other
 7 irregular income;

8 (B) expenses;

9 (C) assets; and

10 (D) liabilities.

11 (2) The borrower's credit history.

12 (3) Any other factor likely to affect the borrower's ability to
 13 repay the home loan at the home loan's full monthly cost.

14 (b) As used in this section, "borrower" includes a prospective
 15 borrower, where appropriate.

16 (c) As used in this section, "full monthly cost", with respect to
 17 a home loan means the maximum monthly payment that the
 18 borrower will be required to pay with respect to the home loan,
 19 calculated as the total of the following monthly costs that the
 20 borrower will be responsible for paying at any time during the
 21 term of the home loan:

22 (1) Principal plus interest at the home loan's trigger rate.

23 (2) Property taxes.

24 (3) Homeowners insurance premiums.

25 (4) Private mortgage insurance premiums.

26 (5) Premiums for:

27 (A) credit life insurance;

28 (B) credit disability insurance;

29 (C) credit unemployment insurance; or

30 (D) other consumer credit insurance;

31 that the borrower has agreed to pay.

32 (6) Homeowners and other assessments, such as special
 33 assessments, condominium fees, and homeowners association
 34 fees.

35 (7) Any other monthly costs that the borrower will be
 36 responsible for paying at any time during the term of the
 37 home loan.

38 (d) For purposes of this section, a creditor makes a "good faith
 39 inquiry" into a borrower's ability to repay a home loan if the
 40 creditor obtains:

41 (1) a consumer report (as defined in IC 24-5-24-2) or other
 42 information maintained by a consumer reporting agency (as

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defined in IC 24-5-24-3) with respect to the borrower; and
 (2) other relevant information about the borrower's present
 and future income, expenses, assets, and liabilities through:
 (A) a current or past employer of the borrower;
 (B) public records; or
 (C) any other legal and commercially reasonable means.

(e) A creditor may not recommend or issue to, or procure on
 behalf of, a borrower a home loan without first making a good
 faith inquiry into the borrower's ability to repay the home loan. A
 creditor that conducts a good faith inquiry into a borrower's
 ability to repay a home loan is not liable to:

- (1) the borrower;
- (2) a subsequent purchaser of the property that is the subject
 of the home loan; or
- (3) any other person;

if the borrower later defaults on the home loan that the creditor
 has recommended or issued to, or procured on behalf of, the
 borrower.

SECTION 10. IC 24-9-3-6, AS AMENDED BY P.L.145-2008,
 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2009]: Sec. 6. (a) A creditor may not charge a fee for
 informing or transmitting to a person the balance due to pay off a home
 loan or to provide a written release upon prepayment. A creditor must
 provide a payoff balance not later than ten (10) calendar days after the
 request is received by the creditor. For purposes of this subsection,
 "fee" does not include actual charges incurred by a creditor for express
 or priority delivery of home loan documents to the borrower if such
 delivery is requested by the borrower.

**(b) This subsection applies to a home loan, or the refinancing or
 consolidation of a home loan, that is closed after June 30, 2009. A
 creditor in a transaction to which this subsection applies may not
 contract for and may not charge the debtor a prepayment fee or
 penalty.**

~~(b)~~ (c) This subsection applies to a home loan with respect to which
 any installment or minimum payment due is delinquent for at least
 sixty (60) days. The creditor, servicer, or the creditor's agent shall
 acknowledge a written offer made in connection with a proposed short
 sale not later than ten (10) business days after the date of the offer if
 the offer complies with the requirements for a qualified written request
 set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's
 agent is required to acknowledge a written offer made in connection
 with a proposed short sale from a third party acting on behalf of the

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debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 11. IC 24-9-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

(2) **For a high cost home loan that is closed before July 1, 2009**, prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.

(3) **For a high cost home loan that is closed before July 1, 2009**, a prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

(4) **For a high cost home loan that is closed before July 1, 2009**, a creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under

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IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8."

(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.

SECTION 12. IC 24-9-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability, **as required under IC 24-9-3-1.1.**

(b) If a creditor presents evidence that the creditor:

(1) followed commercially reasonable practices in determining the borrower's debt to income ratio; **and**

(2) made a good faith inquiry into a borrower's ability to repay the home loan under IC 24-9-3-1.1;

there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. ~~For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.~~

(c) **For purposes of subsection (b)(1),** commercially reasonable practices include the use of:

(1) the debt to income ratio:

(A) listed in 38 CFR 36.4337(c)(1); and

(B) defined in 38 CFR 36.4337(d); and

(2) the residual income guidelines established under:

(A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form 26-6393.

SECTION 13. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 4.5. Residential Real Estate Closings

Sec. 1. This chapter applies to a home loan closing that takes place after June 30, 2009.

Sec. 2. As used in this chapter, "borrower" includes a prospective borrower.

Sec. 3. As used in this chapter, "closing documents" refers to the documents that a settlement service provider is required to provide

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to a borrower at or before the closing of a home loan, in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 4. As used in this chapter, "creditor" includes a mortgage broker in any home loan transaction in which the mortgage broker is required or allowed to provide the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 5. (a) As used in this chapter, "settlement service provider" means a person that provides any settlement service (as defined in 24 CFR 3500.2) in connection with the closing of a real estate transaction.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 6. A creditor shall provide a borrower with a notice that states that, upon the borrower's request, the borrower has a right under Indiana law to inspect, at least two (2) business days before the closing of a home loan, the closing documents with respect to the home loan. The creditor shall provide the notice required by this section at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 7. (a) Subject to subsections (c) and (d), a settlement service provider shall, upon the borrower's request, permit the borrower to inspect the closing documents with respect to the home loan not later than:

- (1) two (2) business days before the closing of a home loan; or
- (2) the time of the borrower's request, if the settlement service provider receives the borrower's request later than two (2) business days before the closing of the home loan.

(b) The settlement service provider shall make the closing documents available to the borrower for inspection under subsection (a):

- (1) at the office of the creditor or the settlement service provider;
- (2) through the United States mail;
- (3) by facsimile; or
- (4) through any other commercially reasonable means.

(c) A settlement service provider's duty to make closing documents available to a borrower within the time set forth in subsection (a) applies only to the extent that the settlement service provider is able to obtain the needed information from the creditor

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making the home loan or from any other party having the needed information. However, a settlement service provider is not relieved of the settlement service provider's duty under subsection (a) unless the settlement service provider first makes a good faith effort to obtain the needed information from the creditor or from other parties so as to allow the settlement service provider to in turn make available the documents to the borrower within the time set forth in subsection (a). If, after a good faith effort by the settlement service provider to obtain the needed information from the creditor or other parties as required under this subsection, the creditor or other parties:

(1) fail to provide the needed information; or

(2) provide information that is not complete;

the settlement service provider shall provide notice to the borrower of that fact as soon as the settlement service provider determines that the needed information will not be available or is incomplete, but in any case not later than the expiration of the two (2) day period specified in subsection (a). The notice required under this subsection must be reduced to writing and provided to the borrower at or before the time of closing.

(d) A borrower may waive the right under subsection (a) to inspect the closing documents with respect to a home loan by providing a written notice of waiver to the settlement service provider at or before the time of closing.

(e) If the borrower:

(1) requests to inspect the closing documents under subsection (a); and

(2) the settlement service provider:

(A) does not permit the borrower to inspect the closing documents within the time specified in subsection (a) or in the manner specified in subsection (b); or

(B) provides notice to the borrower under subsection (c) that, despite the settlement service provider's good faith efforts to obtain the needed information to allow the borrower to inspect the closing documents under subsection (a):

(i) the settlement service provider has been unable to obtain the needed information to allow the borrower to inspect the closing documents under subsection (a); or

(ii) the information that the settlement service provider has obtained is incomplete;

the borrower is entitled to delay or reschedule the closing without

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1 penalty and without forfeiting the right to enter into the home loan
 2 or, in the case of a purchase money home loan, into the purchase
 3 contract.

4 (f) Subject to subsections (g) and (h) and section 8 of this
 5 chapter, if the terms of the home loan set forth in the closing
 6 documents made available to the borrower under subsection (a)
 7 differ from the terms of the home loan presented to the borrower
 8 at the time of the closing, the borrower is entitled to:

9 (1) delay or reschedule the closing without penalty and
 10 without forfeiting the right to enter into the home loan or, in
 11 the case of a purchase money home loan, into the purchase
 12 contract; and

13 (2) if the creditor does not conform the terms of the home loan
 14 to the terms set forth in the closing documents made available
 15 to the borrower under subsection (a), bring an action against
 16 the creditor (or against any subsequent holder or assignee of
 17 the home loan if the home loan proceeds to closing) for:

18 (A) actual damages, including:

19 (i) consequential damages; and

20 (ii) if the home loan does not proceed to closing, any
 21 damages suffered by the borrower as a result of not
 22 entering into the home loan or into the purchase
 23 contract;

24 (B) if the home loan proceeds to closing, statutory damages
 25 equal to two (2) times the difference between:

26 (i) the finance charges set forth in the actual loan
 27 documents; minus

28 (ii) the finance charges set forth in the closing documents
 29 made available to the borrower under subsection (a);

30 if the finance charges set forth in the actual loan
 31 documents are greater than finance charges set forth in the
 32 closing documents made available to the borrower under
 33 subsection (a);

34 (C) reasonable costs and attorney's fees; and

35 (D) such injunctive, declaratory, and other equitable relief
 36 as the court determines appropriate.

37 (g) For purposes of subsection (f), "terms", with respect to a
 38 home loan, includes any of the following:

39 (1) Any of the following terms, as set forth in the disclosures
 40 provided to the borrower under the federal Truth in Lending
 41 Act (15 U.S.C. 1601 et seq.) and as defined in 15 U.S.C.
 42 1638(a):

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(A) The identity of the creditor.

(B) The amount financed.

(C) The finance charge. For purposes of this clause, the finance charge presented to the borrower at the time of closing is not considered to differ from the finance charge set forth in the closing documents made available to the borrower under subsection (a) if the difference between the two (2) charges is within the allowable tolerances for accuracy set forth in 15 U.S.C. 1605.

(D) The finance charge expressed as an annual percentage rate. For purposes of this clause, the annual percentage rate presented to the borrower at the time of closing is not considered to differ from the annual percentage rate set forth in the closing documents made available to the borrower under subsection (a) if the difference between the two (2) rates is within the allowable tolerances set forth in 15 U.S.C. 1606.

(E) The total of payments.

(F) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(G) Any dollar charge or percentage amount that may be imposed by the creditor solely on account of a late payment, other than a deferral or extension charge.

(2) Provisions concerning points and fees.

(3) Provisions concerning nonpayment, default, prepayment, and the right to accelerate the maturity of the debt.

(4) Provisions concerning the servicing of the loan.

(5) Other provisions concerning the rights and responsibilities of the parties to the home loan.

(h) An action under subsection (f)(2) must be brought within five (5) years after:

(1) the closing of the home loan, if the home loan proceeds to closing; or

(2) the date of the first scheduled closing with respect to the home loan, if the home loan does not proceed to closing.

Sec. 8. (a) In addition to the remedies available to the borrower under section 7(f) of this chapter, if the terms of a home loan set forth in the closing documents made available to a borrower under section 7(a) of this chapter differ from the terms of the home loan presented to the borrower at the time of the closing, the attorney general, acting through the attorney general's homeowner protection unit established under IC 4-6-12, may, upon the

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attorney general's own motion or upon receiving a complaint from the borrower or any other person involved in the closing, investigate the circumstances surrounding the home loan to determine:

(1) the reasons for the discrepancy between the terms of the home loan set forth in the closing documents made available to the borrower under section 7(a) of this chapter and the terms of the home loan presented to the borrower at the time of closing;

(2) whether there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing;

(3) whether the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents made available to borrowers before scheduled closings under section 7(a) of this chapter; and

(4) whether the creditor's actions in the case being investigated constitute a violation of:

(A) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);

(B) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.); or

(C) any other federal laws or regulations concerning mortgage lending;

as authorized by IC 4-6-12-3. In conducting an investigation under this section, the attorney general may cooperate with any entity described in IC 4-6-12-4 that may have jurisdiction in the matter, as authorized by IC 4-6-12-5.

(b) Subject to subsection (d), if, after an investigation conducted under subsection (a) the attorney general determines that:

(1) there was an attempt by the creditor to deceive or defraud the borrower by presenting different terms at the time of the closing; or

(2) the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents made available to borrowers before scheduled closings under section 7(a) of this chapter;

the attorney general may pursue any enforcement action or penalty available under IC 24-9-8 for a violation of this article, including bringing an action under IC 24-5-0.5, as authorized by

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IC 24-9-8-1, for a violation of this article. In addition, the attorney general may file a complaint with any entity described in IC 4-6-12-4 that may have jurisdiction over the matter, as authorized by IC 4-6-12-5.

(c) If, after an investigation conducted under subsection (a), the attorney general determines that the creditor has violated:

- (1) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);
- (2) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.); or
- (3) any other federal laws or regulations concerning mortgage lending;

the attorney general may, to the extent authorized by federal law, enforce compliance with the federal statutes or regulations described in this subsection or refer the suspected violation to the appropriate federal regulatory agencies, as authorized by IC 4-6-12-3.

(d) Any action by the attorney general under this section must be brought not later than five (5) years after:

- (1) the closing of the home loan that prompted the investigation, if the home loan proceeded to closing; or
- (2) the date of the first scheduled closing with respect to the home loan that prompted the investigation, if the home loan did not proceed to closing.

Sec. 9. (a) A settlement service provider is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the settlement service provider fails to make closing documents available to a borrower as required by section 7 of this chapter, unless:

- (1) the creditor or other parties having the information needed for the settlement service provider to make the closing documents available to the borrower:

- (A) fail to provide the needed information; or
- (B) provide information that is not complete;

despite the settlement service provider's good faith efforts to obtain the needed information from the creditor or other parties, as required by section 7(c) of this chapter; or

- (2) the borrower has waived the borrower's right to receive the closing documents under section 7(d) of this chapter.

(b) A penalty described in subsection (a):

- (1) may be enforced by the state agency that has administrative jurisdiction over the settlement service provider in the same manner that the agency enforces the

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1 payment of fees or other penalties payable to the agency; and
 2 (2) shall be paid into the home ownership education account
 3 established by IC 5-20-1-27.

4 (c) A settlement service provider is not liable for any other
 5 damages claimed by a customer because of the settlement service
 6 provider's failure to comply with this chapter.

7 SECTION 14. IC 24-9-4.6 IS ADDED TO THE INDIANA CODE
 8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]:

10 **Chapter 4.6. Appraisal Review Programs for Creditors**

11 **Sec. 1.** As used in this chapter, "board" refers to the real estate
 12 appraiser licensure and certification board created by
 13 IC 25-34.1-8-1.

14 **Sec. 2.** As used in this chapter, "commission" refers to the
 15 Indiana real estate commission created by IC 25-34.1-2-1.

16 **Sec. 3. (a)** As used in this chapter, "creditor" means a person:

- 17 (1) who regularly extends mortgage loans that are subject to
 18 a credit service charge or loan finance charge, as applicable,
 19 or that are payable by written agreement in more than four
 20 (4) installments; and

- 21 (2) to whom the obligation arising from a mortgage loan is
 22 initially payable.

23 **(b)** The term does not include a person described in:

- 24 (1) IC 24-9-2-6(a)(2) if the person described in
 25 IC 24-9-2-6(a)(2) is not the person extending the credit in the
 26 transaction; or
 27 (2) IC 24-9-2-6(b).

28 **Sec. 4.** As used in this chapter, "mortgage loan" includes:

- 29 (1) a home loan subject to this article;
 30 (2) a loan described in IC 24-9-1-1, to the extent allowed
 31 under federal law;
 32 (3) a first lien mortgage transaction (as defined in
 33 IC 24-4.4-1-301(6)) subject to IC 24-4.4;
 34 (4) a consumer credit sale subject to IC 24-4.5-2 in which a
 35 mortgage, deed of trust, or land contract that constitutes a
 36 lien is created or retained against land upon which there is a
 37 dwelling that is or will be used by the debtor primarily for
 38 personal, family, or household purposes; and
 39 (5) a consumer credit loan subject to IC 24-4.5-3 in which a
 40 mortgage, deed of trust, or land contract that constitutes a
 41 lien is created or retained against land upon which there is a
 42 dwelling that is or will be used by the debtor primarily for

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personal, family, or household purposes.

Sec. 5. As used in this chapter, "program" refers to an appraisal review program established or adopted by a creditor under section 6 of this chapter.

Sec. 6. (a) After December 31, 2009, a creditor may not issue a mortgage loan to a borrower in Indiana unless the creditor has:

(1) established an appraisal review program that has been approved by the board; or

(2) adopted the appraisal review program criteria established by the board under section 7 of this chapter.

(b) A program established by a creditor under this section must meet the following criteria:

(1) The program must include a reliable validation procedure for determining whether the property valuations reported in the appraisals performed in connection with the mortgage loans issued by the creditor reflect the actual market values of the properties being appraised.

(2) Subject to approval by the board, the creditor must establish a uniform procedure for determining the actual market values of the subject properties in the appraisals being reviewed. A market value determined under this subdivision shall serve as the baseline value against which the valuation reported in an appraisal under review shall be compared. The procedure established under this subdivision may use residential sales comparison data, residential market analyses, or any other approach approved by the board.

(3) The creditor must establish a uniform accuracy tolerance representing a maximum percentage of variation above or below which the value determined in the appraisal being reviewed may not vary from the actual market value of the subject property.

(4) The validation procedure required by subdivision (1) may consist of a program in which the creditor audits a certain percentage of the total appraisals performed in connection with the mortgage loans issued by the creditor during the review period, subject to the following conditions:

(A) The program must include audits of an adequate number of appraisals to have a reasonable chance of identifying appraisals in which the valuation reported in the appraisal differs from the market value determined under subdivision (2) by more than the accuracy tolerance established under subdivision (3). The sample size must not

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be less than ten percent (10%) of the total number of appraisals performed in connection with the mortgage loans issued by the creditor during the review period. The sample must include a reasonable representation of the appraisers whose appraisals are used by the creditor in connection with the mortgage loans issued by the creditor.

(B) The program must be structured to allow acceptable projections of the sample results to the entire population of appraisals performed in connection with the mortgage loans issued by the creditor during the review period.

(5) The program's review periods must be frequent enough to allow prompt post appraisal audits that have a reasonable chance of identifying appraisals in which the valuation reported in the appraisal differs from the market value determined under subdivision (2) by more than the accuracy tolerance established under subdivision (3).

(6) The program must be structured to ensure that any of the creditor's officers, employees, or agents who are:

(A) involved in the origination of the creditor's mortgage loans; or

(B) compensated on a commission basis upon the successful issuance of the creditor's mortgage loans;

are not involved in any way with the creditor's appraisal review program. If absolute lines of independence cannot be achieved as a result of the creditor's small size or limited staff, the creditor must be able to demonstrate to the board that it has prudent safeguards to isolate its appraisal review program from influence or interference from its mortgage loan origination process.

(7) If the creditor's program reveals that the valuation reported in a particular appraisal performed in connection with one (1) of the creditor's mortgage loans differs from the actual market value of the property being appraised by more than the accuracy tolerance established under subdivision (3), the creditor must determine, to the extent feasible:

(A) the reasons for the discrepancy between the reported valuation and the actual market value of the property;

(B) whether the discrepancy represents or is the result of an attempt by:

(i) any director, officer, employee, or agent of the creditor to influence the development, reporting, or result of the appraisal; or

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(ii) the appraiser who performed the appraisal to provide an estimated, predetermined, or desired valuation, regardless of whether the appraiser acted independently or on the demand or request of any director, officer, employee, or agent of the creditor; and (C) whether the appraiser who performed the appraisal has engaged in a pattern or practice of submitting appraisals in which the valuations reported differ from the actual market values of the properties appraised by more than the accuracy tolerance established under subdivision (3), regardless of whether the creditor determines that the discrepancy in the particular appraisal under review is the result of any action described in clause (B).

If the creditor makes an affirmative determination under clause (B) or (C), the creditor may take any reasonable action to remedy the reason for the discrepancy, including any remedy described in subdivision (8).

(8) If the creditor's program reveals that more than ten percent (10%) of the reviewed appraisals in a particular review period involve a reported valuation that differs from the market value of the appraised property by more than the accuracy tolerance established under subdivision (3), the creditor shall take remedial action to address any apparent weakness of its system of obtaining appraisals in connection with its mortgage loans. A remedial action under this subdivision may include any of the following:

(A) Ceasing to do business with a particular appraiser or removing a particular appraiser from a list of approved appraisers used by the creditor in originating its mortgage loans.

(B) Taking necessary actions to isolate the creditor's loan origination staff or department from any:

(i) appraiser performing an appraisal in connection with a mortgage loan issued by the creditor; or

(ii) director, officer, employee, or agent of the creditor involved in the selection, retention, recommendation of, or communication with an appraiser performing an appraisal in connection with a mortgage loan issued by the creditor.

(C) Taking any appropriate disciplinary action against any director, officer, employee, or agent of the creditor determined to have influenced or attempted to influence

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the development, reporting, or result of one (1) or more appraisals conducted in connection with a mortgage loan issued by the creditor.

(D) Any other action designed to reduce the percentage of reviewed appraisals in which the reported valuation differs from the actual market value of the appraised property by more than the accuracy tolerance established under subdivision (3), as determined to be appropriate by the creditor.

(9) Beginning in 2011, not later than March 1 of each year, the creditor shall report the results of each periodic review conducted under the creditor's program during the previous calendar year in a written report to:

(A) the board; and

(B) the homeowner protection unit established by the attorney general under IC 4-6-12;

on a form specified by the board. The board or the homeowner protection unit may share the information contained in a creditor's report with any entity listed in IC 4-6-12-4 that may have jurisdiction over the creditor or an appraiser identified in the report. However, the board, the homeowner protection unit, and any entity listed in IC 4-6-12-4 that receives a report, or information from a report, shall treat the report or information as confidential and shall exercise all necessary caution to avoid disclosure of the information received, except as otherwise permitted or required by law.

Sec. 7. (a) Not later than August 1, 2009, the board shall:

(1) establish criteria for:

(A) approving appraisal review programs established by creditors under section 6(a) of this chapter; and

(B) an appraisal review program that:

(i) meets the criteria set forth in section 6(b) of this chapter; and

(ii) may be adopted and used by a creditor that issues mortgage loans to borrowers in Indiana; and

(2) submit a written copy of the criteria established under subdivision (1) to the commission.

(b) The commission shall adopt rules under IC 4-22-2 to adopt and implement the criteria submitted by the board under subsection (a)(2).

(c) Notwithstanding subsection (b), not later than September 1,

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2009, the commission shall adopt emergency rules under IC 4-22-2-37.1 to adopt and implement the criteria submitted by the board under subsection (a)(2) on an emergency basis. An emergency rule adopted by the commission under this subsection expires on the earlier of:

(1) the date the rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36; or

(2) January 1, 2011.

This subsection expires January 1, 2011.

Sec. 8. (a) Beginning October 1, 2009, a creditor that seeks to issue mortgage loans to borrowers in Indiana after December 31, 2009, shall submit to the board, on a form prescribed by the board, a notice indicating the creditor's election to do one (1) of the following:

(1) Adopt and implement the appraisal review program established by the board under section 7 of this chapter.

(2) Use an appraisal review program established by the creditor, subject to approval by the board. The form prescribed by the board under this section must require a creditor that makes an election under this subdivision to:

(A) describe in sufficient detail the elements of the creditor's program; and

(B) submit any supporting documentation required by the board;

to enable the board to determine whether the creditor's program meets the criteria set forth in section 6(b) of this chapter.

A notice submitted under this subsection must be signed under penalty of perjury by an officer of the creditor or another person authorized to bind the creditor.

(b) Upon receiving a creditor's notice and any supporting documents under subsection (a), the board shall review the notice and any supporting documents for accuracy and completeness, to the extent determinable by the board. If the board determines that the notice and any supporting documents are accurate, complete, and properly verified, the board shall as soon as practicable, but in any case not later than thirty (30) days after the date of the creditor's notice, send notice to the creditor in writing of one (1) of the following:

(1) If the creditor has made an election under subsection (a)(1), that the creditor may issue mortgage loans to borrowers in Indiana:

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- 1 (A) beginning on the date of the board's notice under this
- 2 subsection; and
- 3 (B) subject to the creditor's implementation of and
- 4 compliance with the program established by the board
- 5 under section 7 of this chapter.
- 6 (2) If the creditor has made an election under subsection
- 7 (a)(2) and the board determines that the creditor's appraisal
- 8 review program meets the criteria set forth in section 6(b) of
- 9 this chapter, that the creditor may issue mortgage loans to
- 10 borrowers in Indiana:
- 11 (A) beginning on the date of the board's notice under this
- 12 subsection; and
- 13 (B) subject to the creditor's use of and compliance with the
- 14 appraisal review program described by the creditor under
- 15 subsection (a)(2).
- 16 (3) If the creditor has made an election under subsection
- 17 (a)(2) and the board determines that the creditor's appraisal
- 18 review program does not meet the criteria set forth in section
- 19 6(b) of this chapter, that the creditor may not issue mortgage
- 20 loans to borrowers in Indiana until the creditor:
- 21 (A) submits a notice to the board making an election under
- 22 subsection (a)(1); or
- 23 (B) brings the program described by the creditor under
- 24 subsection (a)(2) in compliance with the criteria set forth
- 25 in section 6(b) of this chapter.
- 26 (c) A notice sent by the board under subsection (b)(3) must
- 27 identify:
- 28 (1) any elements of the creditor's appraisal review program
- 29 that the board has determined do not comply with the criteria
- 30 set forth in section 6(b) of this chapter; and
- 31 (2) any criteria set forth in section 6(b) of this chapter that are
- 32 missing from the creditor's appraisal review program;
- 33 in sufficient detail to enable the creditor to make any changes to its
- 34 program necessary to bring the program in compliance with the
- 35 criteria set forth in section 6(b) of this chapter.
- 36 (d) A creditor that receives a notice from the board under
- 37 subsection (b)(3) may:
- 38 (1) revise the creditor's appraisal review program to make
- 39 any necessary changes identified in the board's notice under
- 40 subsection (b)(3) and resubmit a notice to the board under
- 41 subsection (a)(2) that describes the changes in the program to
- 42 be implemented by the creditor; or

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(2) submit a notice to the board under subsection (a)(1);
at any time without prejudice.

(e) If, after reviewing a notice and any supporting documents submitted by a creditor under subsection (a), the board determines that the notice or any supporting documents are inaccurate or incomplete, or are not properly verified, the board shall as soon as practicable, but in any case not later than thirty (30) days after the date of the creditor's notice, send to the creditor a written notice that identifies any additional information or verifications required. A creditor that receives a notice from the board under this subsection may, at any time and without prejudice, resubmit to the board a notice under subsection (a) that includes the information or verifications identified in the board's notice under this subsection.

(f) This subsection applies to a creditor that has established an appraisal review program before September 1, 2009, that the board has determined under subsection (b)(3) does not meet the criteria set forth in section 6(b) of this chapter. Notwithstanding subsection (b)(3), a creditor to whom this subsection applies may continue to use its existing appraisal review program until the earliest of the following:

(1) The date on which the creditor brings its appraisal review program into compliance with the criteria set forth in section 6(b) of this chapter, as determined by the board upon the creditor's submission of a notice described in subsection (d)(1).

(2) The date on which the creditor is authorized to issue mortgage loans to borrowers in Indiana under a notice from the board under subsection (b)(1), if the creditor subsequently submits a notice to the board under subsection (a)(1).

(3) January 1, 2011.

This subsection expires January 1, 2011.

Sec. 9. (a) Subject to subsection (b), the board may periodically revise the criteria for:

(1) approving appraisal review programs established by creditors under section 6(a) of this chapter; and

(2) the board's appraisal review program criteria initially established under section 7(a)(1)(B) of this chapter;

as the board determines necessary.

(b) Any proposed revisions made by the board under this section do not take effect until:

(1) the board submits a written copy of the proposed revisions

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1 **to the commission; and**

2 **(2) the commission adopts rules under IC 4-22-2 to adopt and**
 3 **implement the board's proposed revisions.**

4 SECTION 15. IC 32-29-7-3, AS AMENDED BY P.L.100-2008,
 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2009]: Sec. 3. (a) In a proceeding for the foreclosure of a
 7 mortgage executed on real estate, process may not issue for the
 8 execution of a judgment or decree of sale for a period of three (3)
 9 months after the filing of a complaint in the proceeding. However:

10 (1) the period is:

11 (A) twelve (12) months in a proceeding for the foreclosure of
 12 a mortgage executed before January 1, 1958; ~~and~~

13 (B) six (6) months in a proceeding for the foreclosure of a
 14 mortgage executed after December 31, 1957, but before July
 15 1, 1975; and

16 **(C) one hundred twenty (120) days in a proceeding for the**
 17 **foreclosure of a mortgage in which:**

18 **(i) the mortgaged real estate is residential real estate;**
 19 **and**

20 **(ii) the complaint in the foreclosure proceeding is filed**
 21 **after June 30, 2009;**

22 **regardless of the date the mortgage is executed; and**

23 (2) if the court finds that the mortgaged real estate is residential
 24 real estate and has been abandoned, a judgment or decree of sale
 25 may be executed on the date the judgment of foreclosure or
 26 decree of sale is entered, regardless of the date the mortgage is
 27 executed.

28 (b) A judgment and decree in a proceeding to foreclose a mortgage
 29 that is entered by a court having jurisdiction may be filed with the clerk
 30 in any county as provided in IC 33-32-3-2. After the period set forth in
 31 subsection (a) expires, a person who may enforce the judgment and
 32 decree may file a praecipe with the clerk in any county where the
 33 judgment and decree is filed, and the clerk shall promptly issue and
 34 certify to the sheriff of that county a copy of the judgment and decree
 35 under the seal of the court.

36 (c) Upon receiving a certified judgment under subsection (b), the
 37 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 38 premises or as much of the mortgaged premises as necessary to satisfy
 39 the judgment, interest, and costs at public auction at the office of the
 40 sheriff or at another location that is reasonably likely to attract higher
 41 competitive bids. The sheriff shall schedule the date and time of the
 42 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.

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on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe; under subsection (b).

SECTION 16. An emergency is declared for this act.

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